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MICROSOFT CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DAVID CAMERON, et al.

Plaintiff

v.

APPLE, INC.,
Defendant.

Case No. 4:19-CV-03074-YGR

**DECLARATION OF DAVID P.
CHIAPPETTA REGARDING JOINT
STATEMENT ON PENDING MOTIONS
TO SEAL**

Pursuant to Civil Local Rule 79-5, I declare as follows:

1. I am a partner at the law firm Perkins Coie LLP and counsel to Microsoft Corporation (“Microsoft”), which is not a party to the above-captioned case. I am a member in good standing of the State Bar of California. The facts stated in this declaration are based on my own personal knowledge and, if called as a witness, I could and would testify to those facts.

2. I submit this declaration in response to the Court’s Order re: Pending Motions to Seal (Dkt. 439) and the Joint Statement Regarding Pending Motions to Seal (Dkt. 441) regarding Microsoft’s pending sealing requests in this matter (Dkts. 342, 343, and 416).

3. In light of the Court’s order, Microsoft has re-evaluated its sealing requests and hereby withdraws the following requests:

| Document or Portion of Document to Be Sealed | Associated Docket | Status |
|--|-------------------|-----------|
| Expert Class Certification Report of Professor Einer Elhauge (“Elhauge Report”) dated June 1, 2021 at 76, 158, 167, 221-22, n. 170, 443, 473, 642, attached as a [SEALED] exhibit to the Berman Decl. | 342-343 | Withdrawn |
| Economides Report at 22. | 342-343 | Withdrawn |
| Defendant Apple Inc.’s Notice of Daubert Motion to Exclude Testimony of Professor Einer Elhauge, Professor Nicholas Economides, and Christian Tregillis and Memorandum of Points and Authorities (“Apple Daubert Motion”) <ul style="list-style-type: none"> 3:15-24 8:7-8 | 416 | Withdrawn |
| Defendant Apple Inc.’s Memorandum of Points and Authorities in Opposition to Plaintiffs’ Motion for Class Certification <ul style="list-style-type: none"> 20:26 21:7 | 416 | Withdrawn |
| Hitt Expert Report <ul style="list-style-type: none"> Paragraph 126 (Page 73) First sentence of ¶ 128 (Page 73) Footnote 247 (Page 73) Third sentence in n.614 (Page 184) Paragraph 387 (Page 188) | 416 | Withdrawn |

| Document or Portion of Document to Be Sealed | Associated Docket | Status |
|--|--------------------------|---------------|
| Hitt Expert Report <ul style="list-style-type: none"> Financial figures in the last line of Figure 22 of ¶ 129 (Page 75) Financial figures in ¶ 384 (Page 187) | 416 | Withdrawn |
| Hitt Expert Report <ul style="list-style-type: none"> Fifth sentence of n.397 (Page 109) | 416 | Withdrawn |
| Hitt Expert Report <ul style="list-style-type: none"> References to internal code name in n.118 (Page 82), n.247 (Page 73), n.253 (Page 74), n.614 (Page 184), n.635 (Page 187), n.636 (Page 187), and n.637 (Page 187). | 416 | Withdrawn |
| Expert Report and Declaration of Richard Schmalensee, Ph.D. ("Schmalensee Report") <ul style="list-style-type: none"> Second Sentence of ¶ 142 (Page 72) | 416 | Withdrawn |
| Ex 18.2 Elhauge Deposition Transcript attached to Declaration of Rachel S. Brass in Support of Opposition to Motion to Strike <ul style="list-style-type: none"> 182:20-22¹ | 416 | Withdrawn |
| Ex. 19.2 Economides Deposition Transcript Declaration of Rachel S. Brass in Support of Opposition to Motion to Strike <ul style="list-style-type: none"> 180:25-181:3, 183:22-184:13 182:18-183:3 188:12-16, 190:17-18, 191:11-192:1, 201:18-22, 202:2-12, 203:5-24, 232:17-20 192:9 | 416 | Withdrawn |

4. Microsoft believes that its remaining sealing requests, identified below, meet the criteria of the Court's order, and requests that these materials be sealed.

¹ Please note that the page reference 180:20-22 from Dkt. 416 has been replaced with the correct reference 182:20-22.

| Document or Portion of Document to Be Sealed | Reason for Sealing | Evidence Offered in Support of Sealing | Status |
|--|---|--|-------------------|
| Expert Class Certification Report of Professor Nicholas Economides (“Economides Report”) at 12-13, attached a [SEALED] exhibit to the Declaration of Steve W. Berman (ECF No. 331-1) (“Berman Decl.”). | This expert report reflects Microsoft’s analysis of potential market opportunities based on non-public financial information, which if made public would put Microsoft at a competitive disadvantage. The court previously sealed this data in Pretrial Order No. 9 in the <i>Epic v. Apple</i> litigation. | Dkt. 342 (citing April 30, 2021 Hampton Decl. (No. 4:20-cv-05640-YGR, ECF No. 551-3) (“Hampton Decl.”) ¶¶ 1-7); <i>see also</i> Dkt. 564, No. 4:20-cv-05640-YGR, ECF No. 564 (“Pretrial Order No. 9, <i>Epic v. Apple</i> ”) at 2-3. | Sealing Requested |
| Portions of Developer Plaintiffs’ Motion for Class Certification that aggregate Microsoft’s confidential information (ECF No. 332). | The motion contains aggregate figures that include Microsoft’s non-public financial information combined with other non-parties’ potentially confidential information. To the extent other non-parties choose not to request sealing of their respective financial or other information, Microsoft’s competitors could reverse engineer or deduce Microsoft’s non-public figures, which if made public would put Microsoft at a competitive disadvantage. | Dkt. 342 (citing Hampton Decl. ¶¶ 1-7); Dkt. 343 (Declaration of Herbert Holzer dated June 4, 2021 (“Holzer Decl.”) ¶¶ 1-6). | Sealing Requested |

| Document or Portion of Document to Be Sealed | Reason for Sealing | Evidence Offered in Support of Sealing | Status |
|--|---|--|-------------------|
| <p>Expert Report and Declaration of Robert D. Willig (“Willig Expert Report”)</p> <ul style="list-style-type: none"> Paragraph 121 | <p>This expert report and declaration should be partially sealed because it reflects Microsoft’s non-public financial information as well as competitively sensitive information, which if made public would put Microsoft at a competitive disadvantage. The court previously sealed this data in Pretrial Order. No. 9 in the <i>Epic v. Apple</i> litigation.</p> | <p>Dkt. 416; Dkt. 416-5 (Ex. 5, April 30, 2021 Louie Declaration ¶¶ 3-8)</p> <p>416-7 (Ex. 7, Pretrial Order No. 9, <i>Epic v. Apple</i>)</p> | Sealing Requested |
| <p>Expert Report of Lorin M. Hitt (“Hitt Expert Report”)</p> <ul style="list-style-type: none"> Paragraph 99 (Pages 60-61) First sentence of n.185 (Page 61) Third sentence of ¶ 106 (Page 64) Third and sixth sentences of n.397 (Page 109) | <p>This expert report and declaration should be partially sealed because it reflects Microsoft’s non-public financial information as well as competitively sensitive information regarding Microsoft’s business strategy, pricing strategy, and negotiated terms with customers, which if made public would put Microsoft at a competitive disadvantage or harm its relationships with developers or customers.</p> | <p>Dkt. 416; Dkt. 416-1 (Ex. 1, August 31, 2021 Holzer Decl. ¶ 12);</p> <p>Dkt. 416-6 (Ex. 6, April 30, 2021 Hampton Decl. ¶¶ 4-7);</p> <p>Dkt. 416-7 (Ex. 7, Pretrial Order No. 9, <i>Epic v. Apple</i>).</p> | Sealing Requested |

| Document or Portion of Document to Be Sealed | Reason for Sealing | Evidence Offered in Support of Sealing | Status |
|---|---|---|-------------------|
| Hitt Expert Report Appendix D, Page 5 | This expert report and declaration should be partially sealed because it reflects Microsoft's non-public financial information as well as competitively sensitive information, which if made public would put Microsoft at a competitive disadvantage. The court previously sealed this data in Pretrial Order. No. 9 in the <i>Epic v. Apple</i> litigation. | Dkt. 416; Dkt. 416-5 (Ex. 5, April 30, 2021 Louie Declaration ¶¶ 3-8); Dkt. 416-7 (Ex. 7, Pretrial Order No. 9, <i>Epic v. Apple</i>) | Sealing Requested |
| Expert Report and Declaration of Jeffrey T. Prince, Ph.D ("Prince Report") <ul style="list-style-type: none"> Second sentence of n.102 (Page 40) | This expert report and declaration should be partially sealed because it reflects Microsoft's non-public financial information as well as competitively sensitive information, which if made public would put Microsoft at a competitive disadvantage. | Dkt. 416; Dkt. 416-4 (Ex. 4, August 31, 2021 Louie Decl. ¶¶ 4-6). | Sealing Requested |
| Defendant Apple Inc.'s Opposition to Name Consumer Plaintiffs' Motion for Class Certification <ul style="list-style-type: none"> 15:22-23 | This motion should be partially sealed because it reflects non-public confidential information from MSFT_EPIC_00000095, which was previously sealed in the <i>Epic v. Apple</i> litigation, and if made public, would put Microsoft at a competitive disadvantage and harm Microsoft's relationships with customers. | Dkt. 416; Dkt. 416-7 (Ex. 6, April 30, 2021 Hampton Decl. ¶¶ 4-7); Dkt. 416-7 (Ex. 7, Pretrial Order No. 9, <i>Epic v. Apple</i>). | Sealing Requested |

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is true
2 and correct.

3 Executed this 1st day of November 2021 in Fresno, California.

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5 /s/ David P. Chiappetta
6 David P. Chiappetta
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